

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

## Debtors.

FTX RECOVERY TRUST,  
Plaintiff, . Adversary Proceeding  
No. 24-50184 (KBO)

Plaintiff,

-against-

GATE TECHNOLOGY INCORPORATED,  
GATE GLOBAL, CORP., GATE  
INFORMATION PTE. LTD., and  
SUN YUNZHI,

## Defendants.

**Plaintiff,**

-against-

FORIS DAX MT LTD., FORIS DAX .  
ASIA PTE. LTD., FORIS DAX, . Courtroom No. 3  
INC., and IRON BLOCK CAPITAL, . 824 Market Street  
. Wilmington, Delaware 19801

## Defendants.

Wednesday, June 25, 2025  
9:34 a.m.

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE KAREN B. OWENS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

- Cont'd -

1 FTX RECOVERY TRUST, . Adversary Proceeding  
2 Plaintiff, . No. 24-50189 (KBO)

3 -against- .

4 AMERICAN ACTION .  
5 NETWORK, INC., .

6 Defendant. .

7 .

8 FTX RECOVERY TRUST, . Adversary Proceeding  
9 Plaintiff, . No. 24-50190 (KBO)

10 -against- .

11 AMERICAN PROSPERITY ALLAINCE, .  
12 Defendant. .

13 .

14 FTX RECOVERY TRUST, . Adversary Proceeding  
15 Plaintiff, . No. 24-50191 (KBO)

16 -against- .

17 AMERICAN VALUES .  
18 COALITION, INC., .

19 Defendant. .

20 .

21

22

23

24

25 - Cont'd -

1 FTX RECOVERY TRUST, . Adversary Proceeding  
2 Plaintiff, . No. 24-50192 (KBO)  
3 -against- .  
4 COMMON SENSE LEADERSHIP .  
5 FUND, INC. a/k/a COMMONSENSE .  
LEADERSHIP FUND, .  
6 Defendant. .  
7 . . . . . . . . . . .  
8 FTX RECOVERY TRUST, . Adversary Proceeding  
9 Plaintiff, . No. 24-50193 (KBO)  
10 -against- .  
11 CONGRESSIONAL LEADERSHIP .  
FUND, .  
12 Defendant. .  
13 . . . . . . . . . . .  
14 FTX RECOVERY TRUST, . Adversary Proceeding  
15 Plaintiff, . No. 24-50197 (KBO)  
16 -against- .  
17 FARMINGTON STATE CORPORATION .  
18 (f/k/a FARMINGTON STATE BANK, .  
d/b/a GENIOME BANK, d/b/a .  
19 MOONSTONE BANK), FBH .  
CORPORATION, and JEAN .  
20 CHALOPIN, .  
21 Defendants. .  
22 . . . . . . . . . . .  
23  
24  
25 - Cont'd -

1 FTX RECOVERY TRUST, . Adversary Proceeding  
2 Plaintiff, . No. 24-50199 (KBO)  
3 -against- .  
4 NEW YORK SOLIDARITY NETWORK, .  
5 Defendant. .  
6 . . . . . . . . . . .  
7 FTX RECOVERY TRUST, . Adversary Proceeding  
8 Plaintiff, . No. 24-50200 (KBO)  
9 -against- .  
10 ONE NATION, INC., .  
11 Defendant. .  
12 . . . . . . . . . . .  
13 FTX RECOVERY TRUST, . Adversary Proceeding  
14 Plaintiff, . No. 24-50201 (KBO)  
15 -against- .  
16 PROSPERITY ALLIANCE, INC., .  
17 Defendant. .  
18 . . . . . . . . . . .  
19 FTX RECOVERY TRUST, . Adversary Proceeding  
20 Plaintiff, . No. 24-50202 (KBO)  
21 -against- .  
22 SENATE LEADERSHIP FUND, .  
23 Defendant. .  
24 . . . . . . . . . . .  
25 - Cont'd -

1 FTX RECOVERY TRUST, . Adversary Proceeding  
2 Plaintiff, . No. 24-50203 (KBO)  
3 -against- .  
4 VOTO LATINO, INC., .  
5 Defendant. .  
6 . . . . . . . . . . .  
7 FTX RECOVERY TRUST, . Adversary Proceeding  
8 Plaintiff, . No. 24-50204 (KBO)  
9 -against- .  
10 WORKING AMERICA, .  
11 Defendant. .  
12 . . . . . . . . . . .  
13 FTX RECOVERY TRUST, . Adversary Proceeding  
14 Plaintiff, . No. 24-50211 (KBO)  
15 -against- .  
16 SECUREBIO, INC. dba  
17 SECUREBIO, .  
18 Defendant. .  
19 . . . . . . . . . . .  
20  
21  
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23  
24  
25 - Cont'd -



1 FTX RECOVERY TRUST, . Adversary Proceeding  
2 . No. 24-50220 (KBO)  
3 Plaintiff, .  
4 -against- .  
5 DENG JUN, SHEN LING, TU JING, .  
6 DENG DINGYUAN, DENG LAN, DENG .  
7 JIAN, TU FAN, PAN YANG LIAN, .  
8 HU JINGMING, HU SIFENG, YANG .  
9 YUHUA, QIN YONG QIANG, HUANG .  
10 YAO, DAI FUYANG, FU LING, .  
11 CHEN CHAO, SHEN LIUGEN, LIN .  
12 GUODONG, YANG YIBO, XU MIN, .  
13 XU HONG, WAN JIAN, WU QIAO, .  
14 WU TIANMING, LI PING, JIA .  
15 SHUYUN, and JOHN DOES 1-20, .  
16 Defendants. .  
17 . . . . . . . . . . . . . . . . .  
18 FTX RECOVERY TRUST, . Adversary Proceeding  
19 . No. 25-50635 (KBO)  
20 Plaintiff, .  
21 -against- .  
22 KUROSEMI, INC., .  
23 Defendant. .  
24 . . . . . . . . . . . . . . . . .  
25 FTX RECOVERY TRUST, . Adversary Proceeding  
26 . No. 25-50636 (KBO)  
27 Plaintiff, .  
28 -against- .  
29 NFT STARS LIMITED, .  
30 Defendant. .  
31 . . . . . . . . . . . . . . . . .  
32 - Cont'd -

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25 transcript produced by transcription service.

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1 || (Proceedings commenced at 9:34 a.m.)

2 THE CLERK: All rise.

3 THE COURT: Good morning, everyone. Nice to see  
4 you. Please be seated.

5 Good morning.

6 MR. PIERCE: Good morning, Your Honor.

7 Matthew Pierce with Landis Rath & Cobb, on behalf  
8 of the FTX Recovery Trust.

9 Your Honor, consistent with the Court's direction  
10 at the May hearing, we've split the agenda into a morning  
11 session, with respect to the omnibus matters and then an  
12 afternoon session with respect to the Melamed claim objection  
13 matters, which appear at Agenda Items 44 and 45.

14 Your Honor, the majority of the matters set for  
15 the morning session are resolved. We appreciate the Court  
16 for entering the orders that were submitted under CNO and  
17 COC.

18 THE COURT: Happy to do so.

19 MR. PIERCE: From the FTX Recovery Trust's  
20 position, there's only one matter set -- remaining to go  
21 forward this morning, which is Agenda Item 41, which is the  
22 Ross Rheingans-Yoo claim objection. Your Honor, we're aware  
23 that there may be a scheduling matter that may need to be  
24 addressed with respect to the claim objection response filed  
25 by Mr. McNeill's client and we're happy to proceed with the

1 agenda however the Court would like.

2 THE COURT: Why don't we take Mr. McNeill's issue  
3 first and then we'll go into the more substantive matter.

4 MR. MCNEILL: Good morning, Your Honor.

5 Steve McNeill from Potter Anderson & Corroon, here  
6 on behalf of my client who has been identified with a unique  
7 code of 911658. I understand customer identifications are  
8 sealed in this matter, Your Honor.

9 And thank you for the time in court this morning,  
10 Your Honor. I apologize for the early-morning email.

11 Essentially, Your Honor, my client was the subject  
12 of the one-hundred-and-sixtieth-omnibus objection that was  
13 filed back, I believe, in February. We had originally  
14 reached out regarding potential settlement resolution, got an  
15 adjournment. The adjournment was in perpetuity. Things  
16 weren't progressing fast enough for my client, so he wanted  
17 us to move forward.

18 We reached out to counsel on May 23rd via email  
19 and said, you know, we'd like to move this forward and, if  
20 not, we want to go forward at today's hearing unless you give  
21 us some documents. They did give us some documents. We  
22 ultimately decided the documents weren't helpful; didn't  
23 really support their position. There's been no settlement  
24 offers proposed either way, Your Honor.

25 So, we filed our objection last Wednesday. We

1 noted on our objection that we, that -- with a hearing date  
2 for today. And then, when the agenda was filed, we noticed  
3 that we were not listed on the agenda at all. We reached out  
4 to counsel and, you know, asked why; apparently, there was  
5 some misunderstanding regarding the production of documents  
6 and that, you know, whether that moved our request to go  
7 forward today or not.

8                 Nevertheless, Your Honor, we're here. We want to  
9 go forward. My client is interested in resolving this and  
10 moving on with his life and I believe that it is a contested  
11 matter. Since we filed the objection, we filed it a week  
12 before, as is customary for objections in this district. We  
13 gave -- we filed it a week ago with today's hearing in mind,  
14 Your Honor, and it's just not on the agenda.

15                 But our request would be that we go forward today  
16 on this matter.

17                 THE COURT: My understanding is that your claim  
18 objection alleges fraudulent inducement, is that correct, or  
19 your claim alleges fraudulent inducement?

20                 MR. MCNEILL: It's -- it was filed *pro se* by my  
21 client Your Honor.

22                 There is a fraudulent component; essentially, it  
23 involves what was supposed to be a charitable donation.

24                 THE COURT: Uh-huh.

25                 MR. MCNEILL: My client made the charitable

1 donation to FTX philanthropy or whatever it's called now.  
2 Made that do nation. We do not believe that it ever left and  
3 went out to any charity.

4                   And so, Your Honor, in our view, that is -- you  
5 know, all the funds at FTX are commingled and our view is it  
6 never left the commingled accounts. And even if it did, FTX  
7 has been suing charities left and right to claw back money  
8 that was paid to the charities. But that is our position,  
9 Your Honor, is that, basically, we were fraudulently induced  
10 into making a gift that never left the FTX estate.

11                  THE COURT: Okay. I ask because that type of  
12 claim seems highly evidentiary in nature.

13                  Are you prepared to go forward today with your  
14 evidence?

15                  MR. MCNEILL: I don't believe so, Your Honor.  
16 There's an abundance of evidence attached to the proof of  
17 claim, but I appreciate that Your Honor probably hasn't seen  
18 that either --

19                  THE COURT: Okay.

20                  MR. MCNEILL: -- because it probably wasn't in the  
21 claims objection binder.

22                  THE COURT: Okay.

23                  MR. MCNEILL: But, Your Honor, that is, you know,  
24 that would be our evidence, would be what was attached --  
25 what was included and attached to the proof of claim, as well

1 as the couple of exhibits to our response.

2 THE COURT: Okay. That's helpful. Thank you.

3 MR. MCNEILL: Thank you.

4 MR. GLUECKSTEIN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. GLUECKSTEIN: Good to see you.

7 Brian Glueckstein, Sullivan & Cromwell, for the  
8 FTX Recovery Trust.

9 So, we have a very different perspective on this,  
10 Your Honor, and I think Your Honor is hitting on some of the  
11 salient points. We did agree -- this was one of numerous  
12 claims, of course, that was in the hundred-and-sixtieth  
13 omnibus objection. We did engage with counsel when they  
14 reached out; we gave them an extension. We did, consistent  
15 with counsel's remarks, they wanted documents, they wanted  
16 information. We provided that information, provided that  
17 information on June 5th. We offered to discuss it on the  
18 phone. We received no substantive engagement.

19 They did file a further, a response to the  
20 objection last week. They filed it under seal. It raises  
21 numerous factual issues, many of which we dispute. If it is  
22 the case, and apparently it is, because the first at least I  
23 heard about this was last evening, that they intended to go  
24 forward today or wanted to go forward today; if that is the  
25 case and they're no longer interested in discussing this

1 claim with us, that's fine. That's their right.

2           But, then, what we would like to do is address a  
3 litigation schedule on this claim. We believe that it might  
4 be discovery that's necessary, based on the filing that they  
5 filed last week. We have some fundamental disagreements.  
6 Counsel just referenced things like tracing and where money  
7 went; that's, by nature, of course, evidentiary. And we  
8 think we should prepare for a hearing if that is, in fact,  
9 necessary on this claim.

10           But, certainly, there's nothing before the Court  
11 today. The Court doesn't have the information it needs to  
12 rule on this and the suggestion that this could just be  
13 granted, based on a proof of claim that was filed is,  
14 obviously, something we disagree with.

15           THE COURT: Okay. All right.

16           Well, listen, I agree that this matter is  
17 premature. I think I would at least need a reply from the  
18 Trust --

19           MR. GLUECKSTEIN: Right.

20           THE COURT: -- but, also, beyond that, there  
21 potentially is factual discovery that will be necessary. I  
22 agree that the parties need to meet and confer and discuss on  
23 a schedule moving forward.

24           It sounds, Mr. McNeill, that you would like to  
25 move forward sooner rather than later, your client would.

1 And so that's fine, I think we have omnibus -- we have dates  
2 scheduled in this case that you could put the matter on and  
3 then drive the parties to litigation on this.

4 So, why don't you meet and confer on a schedule  
5 and a hearing date and we'll move forward with that. You can  
6 use an omni if we think that you can get it done --

7 MR. MCNEILL: Okay. Thank you -- yeah, thank you,  
8 Your Honor.

9 THE COURT: -- in the omnibus time.

10 MR. MCNEILL: I think we're trying to schedule a  
11 call, I think, tomorrow, but it was, you know, kind of -- it  
12 was kind of too little too late at that point --

13 THE COURT: Yeah.

14 MR. MCNEILL: -- and so, I did want to raise it  
15 for Your Honor because I think, you know, we had a  
16 fundamental disagreement about even the tracing thing, given  
17 the facts and circumstances of this case, Your Honor. But I  
18 understand your ruling and we will meet and confer and get  
19 this back on the calendar.

20 THE COURT: That would be great.

21 MR. MCNEILL: Thank you, Your Honor.

22 THE COURT: That would be helpful.

23 And the docket is becoming unmanageable, it seems,  
24 so it's important that you all keep abreast of your matters  
25 and do what you did to keep pushing forward to get them

1 scheduled, because things can just get lost. So it's  
2 incumbent upon everyone to be focused and advocate their  
3 scheduling, I think, in a case of this nature, so thank you.

4 MR. MCNEILL: Thank you, Your Honor.

5 I'm not sure there's much else going forward, but  
6 I am not interested in it.

7 May I and my colleague be excused?

8 THE COURT: That would be fine.

9 And just one more thing. I'm fine with you all  
10 want to agree on an informal schedule, but to the extent that  
11 there'll be further deadlines that we could, perhaps, from  
12 the Court's standpoint, keep track of, like, in a reply  
13 deadline and when you want to schedule it for a hearing, if  
14 you could just keep us abreast of it, I would appreciate it  
15 because we'll monitor and be able to prepare for the hearing,  
16 as opposed to, you know, receive a reply two days before the  
17 hearing. It just makes it difficult for us to be -- to  
18 prepare.

19 MR. MCNEILL: Absolutely, Your Honor.

20 THE COURT: If you want to do a more formal order,  
21 just submit it under certification of counsel and I'll enter  
22 that order. It's up to you.

23 MR. MCNEILL: Okay. Thank you, Your Honor.

24 THE COURT: Okay. Thank you.

25 You may be excused.

1 MR. GLUECKSTEIN: Thank you, Your Honor.

2 And point understood, and we are, as the Trust,  
3 endeavoring to do that. We understand there are a number of  
4 matters, there are a number of claims objections that are  
5 pending. We are, certainly, only trying to bring forward the  
6 ones that we believe are ripe and ready for the Court's  
7 attention --

8 THE COURT: Okay.

9 MR. GLUECKSTEIN: -- that we're unable to resolve.  
10 And we, of course, will give the Court sufficient notice on  
11 that.

12 THE COURT: Okay. Thank you.

13 MR. GLUECKSTEIN: With respect to the matter going  
14 forward this morning, and we have successfully, as Mr. Pierce  
15 referenced, been able to resolve many of the matters that  
16 were originally scheduled for this morning's session,  
17 consensually. Well, there was a late adjournment on one that  
18 we're talking to the movant.

19 So, as far as this morning goes, the only matter  
20 going forward is Agenda Item 41, which is there's objection  
21 to the remaining portion of the proof of claim filed by Ross  
22 Rheingans-Yoo. Your Honor, there was a lot of paper  
23 associated with this claim, but there's very little of it  
24 that's still relevant at this point.

25 THE COURT: I'm motioning for the counsel to the

1 claimant to move forward and set yourself up at counsel's  
2 table, if you see fit.

3 (Pause)

4 MR. GLUECKSTEIN: And specifically, Your Honor,  
5 with respect to the landscape of this claim, in April  
6 of 2024, the Debtors were able to settle all aspects of this  
7 claim except for what is referred to in the briefing as the  
8 "FDU claim," which relates to a portion of a claimed bonus  
9 where the claimant asserts FTX will make, upon election, a  
10 \$650,000 donation to an effective, alterous cause of the  
11 movant's choosing if he wants, is the language that was used.

12 We resolved everything else. We left that claim  
13 expressly open because there was a disagreement with that  
14 claim that could not be reached. And so, where we -- what we  
15 tried to do was streamline this issue for the Court. And the  
16 parties are in agreement that the question before the Court  
17 today is really one that's legal in nature and application of  
18 what are undisputed facts at this point; in fact, we have  
19 filed a stipulation of undisputed facts, filed at  
20 Docket 29218, so that there are no material facts in dispute  
21 and we agreed no evidentiary hearing would be necessary.

22 I will briefly address why the claim, from the  
23 Trust's perspective, can never be allowed. We did address  
24 these points comprehensively in our reply brief filed at  
25 Docket 30712. But just for a bit of context, Your Honor,

1 stepping back, what Mr. Rheingans-Yoo is asking this Court to  
2 do is to compel the FTX Recovery Trust to make a \$650,000  
3 payment to a still-undisclosed, effective, alterous charity  
4 of his choosing from funds that, of course, have been  
5 recovered for the benefit of FTX creditors to be distributed  
6 to victims of the fraud and the matters that have been before  
7 this Court for, unbelievably, will soon be three years.

8 Mr. Rheingans-Yoo is seeking this money to be paid  
9 out of the trust, despite the fact that the offer to make  
10 such a donation that if it had been accepted prepetition --  
11 and there's no dispute that there was never any designation  
12 made by the claimant prepetition; there was never a request  
13 made to FTX prepetition that's in the stipulated facts -- but  
14 if a request had been made and a payment had gone out in the  
15 period of time that we're talking about prepetition, the  
16 Debtors would have sought to claw this money back as a  
17 fraudulent transfer, alongside the approximately \$95 million  
18 and counting of improper, prepetition FTX donations that were  
19 made to hundreds of entities that have already been brought  
20 back into the estate.

21 The record of FTX making specious, fraudulent,  
22 improper payments to purported charities and political groups  
23 is well-documented in the record of these Chapter 11 cases  
24 and elsewhere. There's no basis, legally, equitably or  
25 otherwise to permit Mr. Rheingans-Yoo to force the Recovery

1 Trust to make the \$650,000 payment to an undisclosed  
2 recipient now, when if FTX had done so prepetition, we submit  
3 it would not have been permitted to stand.

4           The request for payment that the claimant has  
5 dressed up as a claim, we submit, must be denied for three  
6 independent reasons and just to touch on them briefly, first,  
7 the movant has -- the claimant has no standing to recover on  
8 the FDU claims because he's neither a creditor with an actual  
9 entitlement to be paid, nor an authorized agent of such  
10 creditor. His proof of claim asserts that he is the  
11 creditor. He checked the box; he's the creditor who's  
12 seeking to recover from the estate.

13           He has since recognized in the papers and in the  
14 stipulated facts, that he doesn't have right to payment on  
15 the claim under which the terms of the bonus memo, if  
16 enforceable, merely provided that Mr. Rheingans-Yoo would be  
17 able to direct a payment, if requested, to an effective,  
18 alterous cause.

19           THE COURT: Let me interrupt you.

20           If he had made the designation prepetition, as you  
21 assert was necessary, then what would have been the -- what  
22 would you have like to seen -- what would you have liked to  
23 see with respect to a claim?

24           MR. GLUECKSTEIN: I think the only -- at that  
25 point, if a designation had been made -- if the hypothetical

1 is the designation was made but the payment was not made --

2 THE COURT: Correct.

3 MR. GLUECKSTEIN: -- if he had just identified the  
4 creditor --

5 THE COURT: Uh-huh.

6 MR. GLUECKSTEIN: -- potentially, that  
7 organization could have attempted to file a claim. We would  
8 object to it, because we don't believe that would be a valid  
9 claim.

10 THE COURT: Why is that, again, I'm sorry? It's  
11 not abundantly clear to me why you don't think it would be a  
12 valid claim, because under -- isn't the theory that it is  
13 part of his bonus compensation?

14 MR. GLUECKSTEIN: His theory is that it's part of  
15 his bonus compensation, right.

16 THE COURT: Okay.

17 MR. GLUECKSTEIN: The question is whether or not  
18 the bonus compensation offer was, in fact, accepted.

19 So, if it was, in fact -- if the hypothetical is  
20 it was, in fact, accepted and he designated somebody to  
21 receive this payment, but we did not make the payment, we  
22 would still have, at that point, that entity could,  
23 theoretically, I guess, have come in and made a claim and we  
24 would have had to evaluate the propriety of that claim and  
25 the circumstances in which that grant was made to that

1 entity.

2 THE COURT: Uh-huh.

3 MR. GLUECKSTEIN: That's a different fact pattern  
4 that we have now.

5 Those two gating issues, right, from our  
6 perspective, never happened. There was never an acceptance  
7 of the offer to actually inform FTX that they want -- that  
8 the claimant wanted such a payment to be made and no  
9 designation was ever made of an entity.

10 So what we have now, post-petition, is  
11 Mr. Rheingans-Yoo coming in and arguing that that offer was  
12 somehow fixed and we should now make the payment to him, that  
13 maybe could be directed. We, of course, have no recourse as  
14 to where that money would go at that point and, of course,  
15 the plan isn't set up that way. And that's why the case law  
16 is clear that the actual claimant has to be the party who is  
17 submitting the claim unless they are doing it on behalf of  
18 another party and we know who that party is.

19 What we would have this in situation, if this  
20 claim were to become allowed, we would make a \$650,000  
21 payment to the claimant who, even under the bonus  
22 compensation structure, if accepted as true, prepetition, was  
23 never entitled to possess that money or to keep that money,  
24 certainly. He was entitled to direct FTX to make a payment  
25 to somebody else. That never happened and would still never

1 happen, right. As we sit here today, we have no idea where  
2 that money would go if this claim was ultimately allowed.

3 THE COURT: And why wouldn't I be able to just  
4 direct the claims agent to make the distribution to the  
5 charitable entity of his choosing?

6 MR. GLUECKSTEIN: If the claim were to ultimately  
7 become allowed and Your Honor put parameters around it, it  
8 would be under -- you could order and put parameters around  
9 what you needed to put it around --

10 THE COURT: Uh-huh.

11 MR. GLUECKSTEIN: -- but under our claims  
12 structure under the plan --

13 THE COURT: Uh-huh.

14 MR. GLUECKSTEIN: -- right, from the Trust's  
15 perspective, if we have an allowed claim, we pay the  
16 claimant.

17 The holder of the claim at that point would be  
18 Mr. Rheingans-Yoo, as the claimant, who has submitted the  
19 claim. We have nobody else on the scene. We have nobody  
20 else identified as to where that money would go.

21 THE COURT: Okay. I understand. Thank you.

22 MR. GLUECKSTEIN: The only other point I would  
23 just address, and I'll let him speak -- his counsel speak and  
24 reserve on rebuttal -- but the -- what we see in the further  
25 response that the claimant filed here is a lot of reference

1 and discussion about the negotiation history leading up to  
2 the bonus memo that documented what we're now here talking  
3 about, this potential \$650,000 payment. And we submit while  
4 that documentation is annexed to the stipulated facts because  
5 those documents exist, right, our position is that none of  
6 those documents are relevant and that parol evidence is not  
7 admissible for the question at hand because what we have is  
8 an employment agreement that postdates those documents.

9                 That agreement includes an integration clause.  
10 It's clear. The language is clear. The case law is clear  
11 that on that type of language and, in fact, almost verbatim  
12 language, the cases we cite in our reply papers, the Court is  
13 not to look at parol evidence that predates that. If  
14 Mr. Rheingans-Yoo liked some of the formulations of how his  
15 compensation bonus was going to be structured from the  
16 earlier correspondence between himself and Mr. Bankman-Fried,  
17 he needed to document that in the signed agreement.

18                 The signed agreement is what controls here. That  
19 does not provide for any of this with respect to this  
20 potential payment. What, then, would govern it was his bonus  
21 memo that postdates in connection with his employment  
22 agreement and that has this language, whereby he needs to  
23 have accepted and designated in order to trigger this.

24                 And from our perspective, Your Honor, it is  
25 important that the employment agreement itself talks about

1 the fact that a bonus could be offered and granted at the  
2 sole discretion of the Debtor entity. And terms can be put  
3 on that. Conditions can be put on that. And the conditions  
4 that were put on this particular piece of the grant, unlike  
5 his other compensation which resolved for the settlement that  
6 we reached last year, was that this had to be accepted.  
7 There had to be direction provided to the Debtor, or to FTX  
8 at the time --

9 THE COURT: Uh-huh.

10 MR. GLUECKSTEIN: -- and that never happened. And  
11 it's undisputed that it has never happened, even up until  
12 today.

13 What's being asked for is the Court to grant this  
14 claim, to make the \$650,000 payment, and as we would have to  
15 pay out under our plan, absent the Court imposing some sort  
16 of conditions, we would pay it to the claimant and that would  
17 be the end to the Trust's role in this. And we don't believe  
18 that under the circumstances, funds should be coming out of  
19 the trust that are otherwise distributable to victims here  
20 for this sort of a claim.

21 THE COURT: When do you assert was the deadline by  
22 which the claimant had to accept the alleged offer?

23 MR. GLUECKSTEIN: The claimant -- well, the  
24 reality of the situation is that shortly after the events in  
25 question here, we filed for bankruptcy, right, so --

1                   THE COURT: Which would have been my next  
2 question: When was the petition date in relation to this?

3                   MR. GLUECKSTEIN: So while there wasn't a firm  
4 expiration deadline that's set out in the documents, we  
5 certainly believe FTX would view this as requiring acceptance  
6 within a reasonable period of time. But it's mooted by the  
7 fact that, from our perspective, that the bankruptcy  
8 intervened here.

9                   And so there was no -- there was a period of time  
10 pre-bankruptcy, but no designation was made. But then the  
11 bankruptcy happens, the proof of claim is filed. There was  
12 never any attempt to designate anybody pre or post-petition,  
13 and so --

14                  THE COURT: When was the bar date established in  
15 this case?

16                  MR. GLUECKSTEIN: I'm sorry, Your Honor?

17                  THE COURT: When was the bar date?

18                  MR. GLUECKSTEIN: The bar date on this type of a  
19 claim was June -- the non-customer claim bar date was June  
20 of 2023.

21                  THE COURT: Okay. Thank you.

22                  MR. GLUECKSTEIN: So that's -- you know, the claim  
23 was filed and preserved in connection with the bar date, but  
24 the bar date was set eight months after the petition date.

25                  THE COURT: Understood.

1               Okay. That's helpful. Thank you.

2               MR. GLUECKSTEIN: Absent any other questions, Your  
3 Honor, I would just reserve time for rebuttal.

4               THE COURT: I don't think I have any at this time.  
5 Thank you.

6               MR. GLUECKSTEIN: Thank you, Your Honor.

7               MR. JOYCE: Good morning, Your Honor.

8               THE COURT: Good morning.

9               MR. JOYCE: Nice to be here, Your Honor.

10              THE COURT: Nice to see you.

11              MR. JOYCE: Michael Joyce for claimant, Ross  
12 Rheingans-Yoo.

13              Your Honor, Mr. Rheingans-Yoo is in court today,  
14 along with my co-counsel Scott Simon of the Goetz Fitzpatrick  
15 firm. Mr. Simon is admitted *pro hac* and I would cede the  
16 podium to Mr. Simon if it pleases the Court?

17              THE COURT: That would be fine. Thank you.

18              MR. JOYCE: One matter, Your Honor, before I do.

19              I want to make sure you had a copy of the stip and  
20 the related exhibits; if not, Your Honor, we can hand up a  
21 binder.

22              THE COURT: Oh, I don't have them in front of me  
23 and I'm happy to refer to them during argument.

24              MR. JOYCE: May I approach, Your Honor?

25              THE COURT: Absolutely.

1 (Pause)

2 THE COURT: Thank you.

3 Do you happen to have an extra copy for my law  
4 clerk?

5 MR. JOYCE: I have possibly one to share. You can  
6 have this one. We have our own copy.

7 MR. SIMON: We gave a copy to counsel, so...

8 THE COURT: Oh, okay. If you happen to have an  
9 extra one. Thank you.

10 MR. SIMON: Thank you. I appreciate it.

11 Good morning, Your Honor --

12 THE COURT: Good morning.

13 MR. SIMON: -- Scott Simon, Goetz Platzer, LLP,  
14 representing Ross Rheingans-Yoo, who is here in the  
15 courthouse with us today.

16 The Debtors are objecting to a strawman version of  
17 Ross' claim. They say Ross lacks standing, but they cite  
18 products liability cases where the claimant had no  
19 relationship with the Debtor. They cite a case where the  
20 claimant sold his claim to a third party before he filed it.  
21 They cite cases where the claimant filed the proof of claim  
22 representing an undisclosed class action, right.

23 None of the cases the Debtor cites addressed the  
24 issues that we have before the Court today, which is Ross was  
25 employed by the Debtor. The Debtor awarded him a bonus --

1 that's undisputed -- the Debtor did not pay the bonus. Ross  
2 has standing to assert a wage claim here and this isn't  
3 argued; this is stipulated fact.

4                 The Debtor issued a bonus memo to Ross two months  
5 before the petition date, in August or September of 2022.  
6 The Debtor did not dispute Ross' standing to assert the cash  
7 portion of his claim; that was resolved. So it doesn't make  
8 sense for the Debtor to say that Ross lacks standing to  
9 assert a claim based on the FDU portion, which was awarded in  
10 the same bonus memo.

11                 The Court understands that it's not our position  
12 that Ross should be paid this FDU claim. He is asserting the  
13 claim because he has a right, a property right, a wage right  
14 to direct payment to a charity that he designates.

15                 Next, the Debtors say that Ross forfeited the FDU  
16 bonus by not accepting it in the two months between the bonus  
17 memo and the petition date. Again, the Debtor argues against  
18 the strawman.

19                 They cite a case where the Debtor claims he should  
20 have been awarded a bonus based upon the Debtor's past course  
21 of performance of awarding bonuses to people in that position  
22 and the Court disallowed the claim because the Debtor had the  
23 discretion to award a bonus or not.

24                 Here, of course, the parties stipulated that the  
25 Debtor actually awarded the FDU bonus to Ross. This

1 distinction is material, Your Honor. The Debtor did not  
2 engage with the numerous cases we cited for the principle  
3 that a bonus is earned when it's awarded, not when it's paid,  
4 even if the bonus is contingent upon future events. Nor did  
5 the Debtor engage with the cases we cited anticipating the  
6 argument on reply that Ross waived the bonus by not accepting  
7 it before the petition date.

8 It's black-letter law that waiver requires a  
9 voluntary and intentional relinquishment of rights. In the  
10 stipulated facts, the parties agree that the bonus memo  
11 contained no mechanism for Ross to accept the bonus, nor a  
12 deadline for him to do so.

13 In one of the cases the Debtor cited on reply,  
14 Barker v The Bancorp, the Court recited a longstanding policy  
15 against the forfeiture of earned wages. That's what we have  
16 here. Ross, indisputably, earned a bonus. It was awarded to  
17 him. The Debtor is wrongfully arguing that Ross forfeited.

18 Now, the Debtors would have the Court exclude  
19 Exhibit G in the binder we just provided; that's called  
20 "final Ross terms." The final Ross terms is the final  
21 version of a negotiated document between Ross and the Debtors  
22 that was executed before the employment agreement was signed.

23 The Debtor seeks to preclude Ross terms because  
24 the Ross terms affirmatively states that Ross would receive  
25 the bonus. The Debtor's obligation to pay the bonus is not

1 contingent upon Ross accepting it. There's no "if you want"  
2 in the bonus memo.

3 The Debtor also seeks to preclude Ross terms  
4 because it discusses Ross holding or rolling over the FDU  
5 bonus, demonstrating that the parties never expected Ross to  
6 immediately designate a charity.

7 Now, the Debtor holds up the employment  
8 agreement's integration clause as a complete bar to the  
9 admissibility of Ross terms as parol evidence, but that's not  
10 the law. Even the cases cited by the Debtor provide that an  
11 integration clause prevents evidence from being admitted only  
12 for the purpose of contradicting a writing when the subject  
13 is specifically dealt with in the written agreement.

14 Here, Ross does not seek to shirk his part in or  
15 avoid the consequences of the plain language of the  
16 employment agreement. The employment agreement provides the  
17 Debtor explicitly with two pieces of discretion: how much --  
18 whether to award a bonus at all and if the bonus is awarded,  
19 how much to award. This is undisputed.

20 The Debtor ignores that the employment agreement  
21 fails to discuss the structure of the bonus as the bonus  
22 structure was discussed in Ross terms. So Ross terms doesn't  
23 contradict the employment agreement; it acknowledges that the  
24 Debtor has discretion to award a bonus. It's right there in  
25 Ross terms. But it says if a bonus is awarded, then it will

1 be awarded, half in cash and half in FDUs that Ross can  
2 direct to donate to charity.

3 So --

4 THE COURT: Doesn't the bonus memo memorialize  
5 that anyway; I mean, doesn't the bonus memo that came after  
6 the employment agreement --

7 MR. SIMON: It does --

8 THE COURT: -- provide the bonus and the FDU  
9 award?

10 MR. SIMON: Your Honor, you're absolutely right,  
11 but what it --

12 THE COURT: Okay. So why do I need to look at the  
13 Ross terms anyway?

14 MR. SIMON: Because -- for two reasons: one, the  
15 bonus memo doesn't say -- it's inconsistent with the  
16 employment agreement, right. The bonus memo says, "if you  
17 want."

18 THE COURT: Okay.

19 MR. SIMON: The employment agreement doesn't say,  
20 "if you want."

21 So while we're on the topic of this integration  
22 clause, the Debtor seeks to apply it to Ross, but not to,  
23 themselves. If the Debtor is correct that the employment  
24 agreement is fully integrated, right, they claimed a minute  
25 ago, terms can be put on the award of the bonus; that's

1 Counsel's own language.

2           Terms can't be put. That's what an integration  
3 clause means, right? So if the employment agreement is fully  
4 integrated, it says the Debtor has discretion whether to  
5 award a bonus and how much to award a bonus. It doesn't say  
6 the Debtor can condition the bonus on Ross' specific  
7 acceptance of it; it's awarded. It's deemed accepted.

8           The employment agreement does not allow the Debtor  
9 to condition a bonus. It's also worth mentioning that the  
10 employment agreement, while being unambiguous, was followed  
11 by the bonus memo, which is ambiguous. The Debtor admits  
12 that the bonus memo doesn't tell Ross by when he needed to  
13 designate a charity, nor the mechanism for him to do so.

14           So there's a fundamental principle that ambiguous  
15 documents are construed against their drafting. The Debtor  
16 cited a case about the longstanding policy against forfeiting  
17 wages. So the Debtor can't be heard to argue that Ross  
18 voluntarily and intentionally forfeited this FDU bonus by not  
19 accepting it in the two months between when it was awarded  
20 and when the Debtor filed a Chapter 11 petition. This may  
21 certainly be an issue of first impression for the Court.  
22 It's certainly unusual for an executive to negotiate for half  
23 of his bonus to be paid as a donation to the charity of his  
24 choice, but Ross is a charitable person. He was hired to  
25 direct the charity and he wanted his compensation to be paid,

1 in part, to charity. This is what the Debtor and Ross  
2 agreed, as evidenced by Ross terms.

3 THE COURT: Well, putting aside the Ross terms, if  
4 this is a contract dispute, one could argue that the missing  
5 deadline is a missing term. So what's my authority to fill  
6 in, under contract law, the missing term?

7 MR. SIMON: The missing term can be filled in by  
8 extrinsic evidence because if there's a missing term, then  
9 the employment agreement is only partially integrated. And I  
10 cited many cases for that provision, that principle in my  
11 papers.

12 If a partially integrated document is presented to  
13 the Court, then the parties' prior negotiations are fair  
14 game, especially here, where that parol evidence does not  
15 contradict the agreement. The Ross terms is the exact  
16 evidence the Court is looking for that says: Here's how the  
17 bonus will be structured. There is no timeline for Ross to  
18 accept. It could be held. It could be rolled over. And  
19 there's no "if you want" provision.

20 But even if the Court declines to consider Ross  
21 terms, there's no doubt that the FDU bonus was part of Ross'  
22 compensation. He earned that compensation when the Debtor  
23 awarded it to him and the Debtor's attempt to blatantly add  
24 an "if you want" term that's not in the employment agreement  
25 should be rejected.

1                   THE COURT: Well, couldn't the proof of claim be  
2 the answer to the "if you want"?

3                   MR. SIMON: It certainly could.

4                   I mean, the Debtor is claiming that it wasn't  
5 accepted within a reasonable time, but given a mere two  
6 months and the fact that Ross was an employee, I don't think  
7 that argument holds water. So, yes, Your Honor, I believe  
8 that the claimant here should not be found to have  
9 intentionally and voluntarily forfeited wages that he earned.

10                  THE COURT: Let me ask you this: Why haven't you  
11 designated the charity?

12                  MR. SIMON: Because --

13                  THE COURT: Why don't we know who this alleged  
14 charity would be? I have concerns about that.

15                  MR. SIMON: Because as soon as we filed the  
16 claim --

17                  THE COURT: Uh-huh.

18                  MR. SIMON: -- well, let's back up for a second.

19                  The Debtor filed an adversary proceeding against  
20 Ross and several other entities. Ross was the director of an  
21 FTX affiliate called "Latona BioScience." Latona was one of  
22 the charitable arms of FTX and Latona made grants, donations,  
23 investments in health and science companies.

24                  The Debtor clawed back, as part of this adversary  
25 proceeding settlement, those donations because they were made

1 directly from the Debtor to those entities. Ross as a  
2 Defendant was alleged wrongfully to have, you know, conspired  
3 with Sam Bankman-Fried about the underlying fraud. These  
4 claims were all resolved and settled, but because in that  
5 adversary proceeding the Debtor immediately indicated that  
6 Ross was not entitled to any portion of his claim, we didn't  
7 feel that it was necessary or proper at the time to throw up  
8 a flag and say, Oh, by the way, here's the charity, right.

9 It's just, procedurally, we were baffling over  
10 whether the charitable donation, that FDU claim, was  
11 allowable. And now, once the Court determines that it's  
12 allowable, we can certainly work with the Court and Counsel  
13 to -- with, you know, the claims payment process and the  
14 claims administrator to pay that out. Ross does not seek to  
15 be paid that money, but Ross has the property right to direct  
16 the Debtor to pay that money.

17 Thank you, Your Honor.

18 THE COURT: Okay. Thank you. I understand.

19 MR. GLUECKSTEIN: Thank you, Your Honor.

20 Brian Glueckstein for the Recovery Trust.

21 The backdrop here is important, all right. This  
22 all arises out of what was a substantial piece of fraudulent  
23 transfer litigation. What the claimant was doing, we had  
24 significant concerns, we had serious allegations about what  
25 Latona, itself, what all these charitable donations that were

1 coming out of this entity were doing. We did claw those  
2 amounts back. There were settlements.

3 So the merits of our allegations were never  
4 adjudicated by the Court, because we managed to settle those  
5 claims consensually, okay. But at the end of the day, what  
6 it's being asked to do now is to take a future -- an  
7 additional portion of -- I'll come back to where I started.

8 If this money had been paid out in the period  
9 we're talking about, if on September 2nd, the claimant had  
10 designated the charity and FTX had made the payment,  
11 this \$650,000 would have been subject to the same clawback as  
12 all the other payments that were subject to that litigation  
13 and otherwise.

14 THE COURT: Well, you would have asserted that.

15 MR. GLUECKSTEIN: We would have asserted that.

16 THE COURT: Right. That's not fact or law.

17 MR. GLUECKSTEIN: It's not fact.

18 THE COURT: The fact is that you would have tried  
19 to claw back.

20 MR. GLUECKSTEIN: And I --

21 THE COURT: But that's not the facts we have  
22 before us.

23 MR. GLUECKSTEIN: Well, I think it would raise an  
24 interesting question if it was paid out now, whether we still  
25 retain those claims because I think --

1                   THE COURT: Absolutely.

2                   MR. GLUECKSTEIN: -- we would seek to claw those  
3 back if it were to be paid out now because it's all arising  
4 out of the same circumstances. But I guess --

5                   THE COURT: I guess all rights reserved, if I were  
6 to allow the claim.

7                   MR. GLUECKSTEIN: So that's -- I mean, that,  
8 potentially, is an issue for down the road if we were to get  
9 there.

10                  THE COURT: Okay.

11                  MR. GLUECKSTEIN: But at the end of the day, the  
12 issue here, with respect to this payment, the employment  
13 agreement itself talks about, has a section about bonuses:  
14 You may be eligible for a bonus.

15                  The bonus memo, right, the bonus memo itself talks  
16 about and has this language: If you want us to make the  
17 payment, we'll make the payment. That is an offer. That  
18 piece of it is different; it's worded very differently than  
19 the rest of his compensation, which awards him specific  
20 compensation.

21                  And so it is our argument that that piece of that  
22 offer had to be accepted and it wasn't. And I understand  
23 Your Honor's hypothetical to counsel: Could the proof of  
24 claim by the acceptance? That's a question for the Court.  
25 We don't think so; we think this needed to happen earlier in

1 time.

2 THE COURT: Well, I guess I'm beginning to ask you  
3 the same question that I asked claimant's counsel, which is  
4 under your argument, distilling it to a legal theory, okay,  
5 which is what I'm required to do, there's a missing term,  
6 because everyone agrees there's no deadline. So I have to  
7 fill in that term or maybe the missing term is so essential  
8 it negates the entire contract, but that's not what I'm  
9 hearing.

10 So, how do I fill the missing term in? What do I  
11 look to? What's your position?

12 MR. GLUECKSTEIN: Our position -- I certainly  
13 don't -- we certainly don't agree. Well, there's two points.  
14 So, the Ross terms, as they're referred, we do not believe  
15 those are not admissible.

16 THE COURT: Okay.

17 MR. GLUECKSTEIN: I don't believe, even if Your  
18 Honor were to look at those terms, that that answers the  
19 question Your Honor is posing now.

20 THE COURT: Correct.

21 MR. GLUECKSTEIN: Because it doesn't -- in those  
22 terms, it's more direct language about awarding, but it  
23 doesn't talk about acceptance, how this would be paid;  
24 nonetheless, we think the answer here to this question is,  
25 this never happened in the two months prior to the petition.

1 The petition happened.

2 Our position is regardless of whether there was a  
3 deadline, whether there was a firm deadline that had to be  
4 executed on by Mister -- by the claimant here, if, regardless  
5 of whether that existed or what that term would be, there has  
6 to be a prepetition claim as of the petition date. Now, our  
7 argument is that claim never vested, because he never  
8 accepted it.

9 So, whether he could have accepted it a day later  
10 or a month later or two months later --

11 THE COURT: Uh-huh.

12 MR. GLUECKSTEIN: -- had there been no bankruptcy,  
13 he never accepted the offer as of the petition date. There  
14 was no claim. There was an offer with no acceptance to this  
15 piece of his bonus offer. He doesn't have a prepetition  
16 claim that vested as of the petition date.

17 THE COURT: It wouldn't be contingent?

18 MR. GLUECKSTEIN: Contingent on -- I don't think  
19 so -- contingent on him accepting, later, the offer?

20 THE COURT: Well, there's no deadline. I guess  
21 I'm sorry that I'm fixated on this deadline and, you know,  
22 you have to get me off the deadline, because I'm fixated on  
23 this deadline. It's clear, under your theory, there's an  
24 offer, but there's no indication of when the claimant may  
25 have accepted or was required to accept, so to me, there's a

1 missing term.

2 Do we disagree?

3 MR. GLUECKSTEIN: If there's -- there is -- there  
4 is no deadline. We -- I agree --

5 THE COURT: Okay.

6 MR. GLUECKSTEIN: -- there is no deadline, as in  
7 the documentation --

8 THE COURT: Right.

9 MR. GLUECKSTEIN: -- as to when he would have had  
10 to accept.

11 THE COURT: Okay. So, does that make the claim  
12 contingent?

13 MR. GLUECKSTEIN: I think it -- I don't think it  
14 makes the claim contingent. I think what it does is that  
15 he -- that there was no -- there was no claim as of the  
16 petition date, because he did not accept it prior to that.

17 Whether he -- whether the deadline was  
18 November 1st, December 1st, six months later, the intervening  
19 event here was a bankruptcy. There was no claim that he has  
20 at that time.

21 THE COURT: Okay.

22 MR. GLUECKSTEIN: If the argument is he could have  
23 accepted it at any point in the future and we have this  
24 indefinite, contingent claim, you know, it's -- we disagree  
25 with that.

1                   THE COURT: Okay. No, that's helpful.

2                   Okay. I think I more -- I understand your  
3 position. Okay.

4                   MR. GLUECKSTEIN: Thank you, Your Honor.

5                   THE COURT: Okay. Thank you.

6                   Okay. Let me take a short break and I'm going to  
7 come back and rule, all right.

8                   We'll stand adjourned.

9                   MR. SIMON: Thank you, Judge.

10                  (Recess taken at 10:16 a.m.)

11                  (Proceedings resumed at 10:42 a.m.)

12                  THE CLERK: All rise.

13                  THE COURT: Thank you for your patience. Please  
14 be seated.

15                  All right. Thank you for the submissions in  
16 anticipation of today's hearing on this issue, as well as the  
17 arguments today. And I do appreciate the parties meeting and  
18 conferring to streamline the hearing today and reach the  
19 stipulated facts that smoothed the way for today's argument.

20                  Based on the submissions and the arguments of  
21 counsel today, I am prepared to overrule the Debtor's  
22 objection and allow the FDU claim as a general unsecured  
23 claim. I'll note at the outset this is a highly unusual set  
24 of facts -- I've never seen it before -- it does put us in a  
25 bit of a procedural, a unique procedural posture, with

1 respect to the claim distribution, and I'll talk about that  
2 in a moment. But to the actual issues at hand, I do find  
3 that the claimant has standing to assert this claim, given  
4 his personal interests in the FDU and the bonus. And I do  
5 believe that the claim was part of his bonus, as indicated by  
6 the subsequent memorandum of Mr. Bankman-Fried, outlining the  
7 terms of the discretionary bonus approved by the company.

8                 As I think I hinted at very clearly in the  
9 argument, the deadline to accept the FDU bonus was not  
10 delineated in the memo, but I find that it was preserved  
11 through the proof of claim that was submitted timely,  
12 pursuant to Judge Dorsey's bar date order and that this is  
13 reasonable, given that the bankruptcy intervened shortly  
14 after the bonus memorandum was issued.

15                 Mr. Yoo has indicated that he is not seeking to  
16 receive payment of the claim; he would like it directed to  
17 the charity. I think the way to go about handling this issue  
18 is for the parties to meet and confer on the designated  
19 charity and that there is an order that allows the claim, but  
20 directs the claims agent to make the payment to the charity  
21 that is designated by the claimant.

22                 If there's dispute, with respect to the  
23 claimant -- the charity that is designated; that issue is not  
24 before me today and I would entertain the dispute, if there  
25 is one. You'll have to let me know what that dispute is and

1 how we'll tee it up, okay.

2 Let me ask, when can you make the decision on the  
3 charity, because I think it needs to be done ASAP.

4 MR. SIMON: Within the week, Your Honor.

5 THE COURT: Okay. All right.

6 So meet and confer with Mr. Glueckstein and his  
7 colleagues regarding a form of order that would memorialize  
8 the ruling and address the distribution issues. There could  
9 be some unique issues from the Trust's perspective and the  
10 claims agent, so we'll work through those issues and I'll be  
11 here if you need me for subsequent disputes, okay.

12 Okay. Thank you very much.

13 MR. SIMON: Thank you.

14 THE COURT: Is there anything else for this  
15 session?

16 (No verbal response)

17 THE COURT: No?

18 Okay. I will see you, then, at 1:30. Thank you  
19 all very much.

20 COUNSEL: Thank you, Your Honor.

21 THE COURT: We'll stand adjourned.

22 (Recess taken at 10:45 a.m.)

23 (Proceedings resumed at 1:35 p.m.)

24 THE CLERK: All rise.

25 THE COURT: Good afternoon. Nice to see everyone.

1           Please be seated.

2           MR. PIERCE: Good afternoon, Your Honor --

3           THE COURT: Mr. Pierce?

4           MR. PIERCE: -- Matthew Pierce.

5           Good to see you again.

6           THE COURT: Good to see you again.

7           MR. PIERCE: Your Honor, I'm Matthew Pierce of  
8 Landis Rath & Cobb on behalf of the FTX Recovery Trust, for  
9 the record.

10           Your Honor, we're picking up on the agenda where  
11 we left off where we broke this morning, which is Agenda  
12 Item 44. I will turn it over to Mr. Dunne, who will handle  
13 the balance of the agenda.

14           THE COURT: Great. Thank you so much.

15           MR. DUNNE: Good afternoon, Your Honor.

16           THE COURT: Good afternoon.

17           MR. DUNNE: Christopher Dunne from Sullivan &  
18 Cromwell for the FTX Recovery Trust.

19           We are here to address certain threshold issues  
20 relating to the Trust's amended objection to the claims filed  
21 by Mr. Seth Melamed. As a brief reminder, Mr. Melamed has  
22 filed five operative claims seeking approximately \$36  
23 million. These claims arise from FTX's acquisition of a  
24 company called "Liquid Group," of which Mr. Melamed was a  
25 shareholder and an officer, as well as some subsequent

1 employment operations.

2 Mr. Melamed's principal claim, which is  
3 Number 3385, relates to the Liquid share-purchase agreement,  
4 sounds and fraud and breach of contract, and we refer to this  
5 in our papers and I'll refer to it today as the "SPA claim."  
6 The vast majority of the value that Mr. Melamed seeks to  
7 recover across all of his claims comes from two buckets of  
8 consideration that were set forth in the Liquid SPA and those  
9 buckets are one million shares of FTX common stock; we call  
10 that the "FTX consideration shares," and specified amounts of  
11 particular cryptocurrency tokens, which were to be delivered  
12 to Mr. Melamed in April 2023 and 2024, but we're not  
13 delivered, of course, because FTX went into bankruptcy. We  
14 call that the "crypto consideration." And as this Court is  
15 aware, of course, Mr. Melamed has moved to compel  
16 arbitration. The Liquid share-purchase agreement has a  
17 Singapore law arbitration clause. The Trust opposes  
18 arbitration.

19 At the May 14th hearing, Your Honor, the Court  
20 determined that we would address three threshold issues  
21 today: first, whether the portion of Mr. Melamed's claim  
22 relating to the FTX consideration shares should be  
23 subordinated, pursuant to Section 510(b) of the Bankruptcy  
24 Code; second, whether the FTX plan of reorganization should  
25 be applied to Mr. Melamed's claim relating to the crypto

1 consideration. As this Court is aware, the plan provides  
2 that claims in respect of digital assets are valued using  
3 petition date prices, as set forth in the digital assets  
4 estimation order. And, third, the third threshold issue  
5 being, whether any of Mr. Melamed's claims should be  
6 liquidated in arbitration.

7 Before I begin, Your Honor, I would remind the  
8 Court that both, the Trust and Mr. Melamed, have submitted  
9 declarations of four law experts in connection with this  
10 matter and at the May 14th hearing, the parties agreed that  
11 these declarations should be admitted into evidence and to  
12 forego cross-examination of the secured parties. The Court  
13 subsequently also indicated that it did not have questions  
14 for the experts, so the Trust respectfully moves to admit  
15 into evidence the declarations of Mr. Taro Tanaka and  
16 Mr. Ashok Kumar; those are the trust experts on Japanese and  
17 Singapore law, respectively. Mr. Tanaka's and Mr. Kumar's  
18 declarations were filed with the Court electronically at  
19 Dockets 28646, 30365, and 30367.

20 THE COURT: Okay. Any objection?

21 MR. ADLER: None, Your Honor.

22 THE COURT: Okay. They're admitted into evidence.  
23 Thank you very much.

24 (Tanaka Declarations received in evidence)

25 (Kumar Declaration received in evidence)

1                   MR. DUNNE: Thank you, Your Honor.

2                   With the Court's permission, I'll begin with  
3 Section 510(b), subordination; the first threshold issue.

4                   THE COURT: Okay.

5                   MR. DUNNE: Your Honor, Section 510(b) provides  
6 that claims for damages arising from the purchase or sale of  
7 a security of the Debtor shall be subordinated.

8                   Mr. Melamed's claim relating to the FTX  
9 consideration shares plainly is such a claim. It is a claim  
10 for damages and it arises from the purchase of FTX  
11 securities, because Mr. Melamed received FTX common stock in  
12 exchange for his Liquid shares. There's no dispute about  
13 that.

14                  If there were any doubt that Mr. Melamed's claim  
15 must be subordinated, the policy underlying Section 510(b)  
16 makes clear that it must be. Many courts have recognized  
17 that in enacting 510(b), Congress made the decision to  
18 subordinate based on risk allocation. And as the Third  
19 Circuit has observed, Section 510(b) was enacted to stop  
20 disappointed shareholders from, "bootstrapping their way to  
21 parity with general creditors."

22                  Mr. Melamed contracted for and received FTX  
23 shares. He is transparently trying to put his claim ahead of  
24 other shareholders by framing it as a claim for breach of  
25 contract and for fraud. When Mr. Melamed sold his Liquid

1 Group shares to FTX, he could have negotiated for payment in  
2 cash entirely. By agreeing to be paid in FTX shares, he has,  
3 as the Third Circuit put it, assumed the risk of business  
4 failure.

5 Now, in all of the papers he has filed in  
6 connection with this claim objection proceeding, Mr. Melamed  
7 has raised only two arguments against Section 510(b)  
8 subordination. In the first, he has tried to really delay  
9 adjudicating it, arguing that this Court should not consider  
10 the matter until other issues, including arbitration, are  
11 first resolved; the Court correctly rejected this at the  
12 May 14th hearing.

13 Second, in response to his initial objection --  
14 I'm sorry, in response to the initial claim objection that we  
15 filed last year, he argued that the SPA was an agreement for  
16 the sale of Liquid Group equity, not FTX equity, and that FTX  
17 shares were, at best, incidental to the transaction. We  
18 would submit that this argument is baseless and, notably,  
19 Mr. Melamed did not raise it in response to the trust's  
20 amended objection. The FTX consideration shares were hardly  
21 incidental to the SPA; in fact, they comprised  
22 approximately 60 percent of the compensation that Mr. Melamed  
23 received in the transaction, and the substantial majority,  
24 even more than 60 percent, of what he's currently seeking on  
25 all of his claims now.

1           And, Your Honor, the fact that Mr. Melamed  
2 acquired the FTX consideration shares as part of the Liquid  
3 M&A transaction does not change the fact that they are  
4 shares, the shares are equity of a debtor, and that his claim  
5 must be subordinated. As in many similar M&A transactions,  
6 Mr. Melamed paid for the FTX consideration shares by  
7 tendering his Liquid shares to FTX. The same is true of many  
8 claimants in many other cases whose claims were subordinated.  
9 For instance, in both In re Kaiser Group International and  
10 Peregrine Systems, these are cases cited at page 13 of the  
11 trust's amended objection and page 8 of the trust's reply,  
12 claimants received debtor equity as part of a share exchange  
13 in a merger, and they subsequently sued for fraud and breach  
14 of contract. In both cases, this Court subordinated the  
15 claims, stating that they were squarely within the purview  
16 of 510(b).

17           When Mr. Melamed entered into the SPA, he accepted  
18 the FTX consideration shares and their associated risk as  
19 partial consideration for the shares of Liquid that he  
20 provided to FTX, and he must, therefore, assume the risk of  
21 FTX's business failure.

22           Relatedly, Your Honor, Mr. Melamed's SPA claim  
23 seeks indemnification of his legal fees that he's incurred in  
24 this action pursuant to an indemnification provision in the  
25 Liquid Group SPA. To the extent that Mr. Melamed is entitled

1 to any indemnification payments, and we of course contend  
2 that he is not, those payments must also be subordinated  
3 pursuant to 510(b). And that's because, Your Honor, in  
4 addition to claims for damages arising from the sale of the  
5 security of the debtor, Section 510(b) on its face calls for  
6 subordination of claims for reimbursement or contribution on  
7 account of such a claim.

8           This Court has consistently interpreted this  
9 language to include fees incurred in connection with  
10 litigation where the underlying claim is itself subordinated.  
11 So, put differently, if the Court concludes that  
12 Mr. Melamed's SPA claim should be subordinated, the legal  
13 fees incurred in litigating that claim must also be  
14 subordinated.

15           And pages 9 and 10 of the trust's reply cites  
16 several cases making this proposition clear. This of course  
17 also makes sense as a matter of policy for all the reasons  
18 that go along with subordination of equity-related claims in  
19 the first place and, as this Court has recognized, a contrary  
20 rule would encourage frivolous litigation and disincentivize  
21 settlement, all at the expense of FTX's other creditors.

22           I'll now address, Your Honor, the second threshold  
23 issue, the crypto consideration. As a reminder, Your Honor,  
24 the Liquid SPA provided that Mr. Melamed was to receive  
25 specified amounts of particular crypto currency tokens, which

1 were to be delivered to him in April of 2023 and April  
2 of 2024, which were not delivered, again, because FTX went  
3 bankrupt.

4                   Unsurprisingly, and as Your Honor is well aware,  
5 the Court and all stakeholders gave substantial attention to  
6 the question of how to deal with digital assets when forming  
7 the FTX plan of reorganization, and the plan provides that  
8 the value of a claim in respect of digital assets is  
9 calculated by converting the value of the digital assets in  
10 question into cash as of the petition date in accordance with  
11 conversion rates set forth in the separate estimation order.

12                  Now, Your Honor, the estimation order, as my  
13 partner Mr. Glueckstein knows all too well, was the linchpin  
14 of the plan itself, it was the subject of multiple contested  
15 hearings, competing expert testimony, and consideration of  
16 over 150 objections from various stakeholders. It was  
17 intended to and, by its plain terms, does encompass all  
18 claims of any type relating to digital assets, which, without  
19 exaggeration, number in the millions. This includes  
20 everything from claims brought by FTX lenders for repayment  
21 of digital asset loan claims to claims brought by FTX  
22 customers for digital assets held in their customer accounts.

23                  Mr. Melamed is not entitled, Your Honor, to  
24 special treatment, his claim for the crypto consideration  
25 clearly falls within the plan's definition of a claim in

1 respect of digital assets and it should be valued  
2 accordingly. To get very granular about it, it is a claim,  
3 as that term is broadly defined in the plan and the  
4 Bankruptcy Code, and the plan of course incorporates the  
5 Bankruptcy Code's definition, because it's a right to payment  
6 regardless of whether or when it was reduced to a judgment,  
7 liquidated, unliquidated, and all the other myriad features  
8 set forth in the Bankruptcy Code. And it is of course in  
9 respect of digital assets because Mr. Melamed was promised  
10 specified crypto tokens and he's seeking to recover value  
11 associated with those tokens.

12 Now, Mr. Melamed, notably, has not challenged the  
13 trust's characterization of his claims for the crypto  
14 consideration as a claim in respect of digital assets under  
15 the plan, he just wants a different valuation framework and  
16 valuation date.

17 Mr. Melamed argues that the crypto consideration  
18 should be valued at the time the SPA was breached. I want to  
19 be very clear about one thing from the outset, whether FTX  
20 breached the SPA and when that breach occurred, assuming it  
21 did, does not matter, the plan provides for one treatment of  
22 claims in respect of digital assets, regardless of how that  
23 is characterized, and that treatment is valuation as of the  
24 petition date using the estimation order.

25 When FTX filed for Chapter 11, as a practical

1 matter, Mr. Melamed had the right to receive specified  
2 digital assets on April 4th, 2023 and April 4th, 2024. It's  
3 clear from the face of the SPA, which even defines the crypto  
4 consideration as the retained consideration because it was  
5 supposed to be retained at closing and released later.  
6 Although Mr. Melamed highlights the fact that there was a  
7 side letter to the SPA that states that the crypto  
8 consideration was paid on the completion date, he  
9 acknowledges in paragraph 19 of his SPA claim that FTX was  
10 entitled to retain that consideration and to release it in  
11 April of 2023 and 2024.

12 So, in short, Your Honor, what Mr. Melamed had on  
13 the petition date was a contractual right to digital assets,  
14 this makes him exactly like millions of other creditors, and  
15 Judge Dorsey correctly rejected arguments for prepetition  
16 valuations of crypto assets in formulating the estimation  
17 order. Mr. Melamed, again, is not entitled to special  
18 treatment, the plan applies to his claim just as it does to  
19 anyone else who has a claim in respect of digital assets.

20 And finally, Your Honor, the threshold issue of  
21 arbitration. First, the Court must address the question of  
22 which of Mr. Melamed's claims are even covered by an  
23 arbitration clause; this is Mr. Melamed's burden to prove.  
24 Mr. Melamed has asserted five claims, he moves to compel  
25 arbitration of all five of them based on an arbitration

1 clause contained in the SPA, but that arbitration clause  
2 relates at most to the SPA claim. Mr. Melamed concedes that  
3 the portion of his administrative claim relating to the KEIP  
4 is not arbitrable. Mr. Melamed's claims for prepetition  
5 compensation for bonus payments and, he contends, the non-  
6 KEIP portion of his administrative claim are governed by a  
7 separate management agreement, not the SPA.

8 Mr. Melamed argues that the management agreement  
9 claims are arbitrable because the management agreement itself  
10 arises from the SPA. The management agreement of course does  
11 not contain an arbitration clause, it contains a very  
12 different clause, which I'll discuss in a moment.

13 So, Mr. Melamed is wrong for several reasons.  
14 First, and importantly, Singapore law governs the SPA's  
15 arbitration clause. Mr. Melamed has not offered the  
16 testimony of any Singapore law expert or any analysis under  
17 Singapore law whatsoever. The trust's Singapore law expert,  
18 Mr. Kumar, has explained that an arbitration clause in one  
19 contract does not extend to disputes arising out of a second  
20 independent contract even where the second contract is  
21 specifically contemplated by the first. This is especially  
22 the case here because the second contract, the management  
23 agreement, not only makes no mention of arbitration it  
24 specifically confers the Tokyo district court with exclusive  
25 jurisdiction over disputes arising from that agreement.

1                   Second, Your Honor, Mr. Melamed has cited one  
2 Southern District of New York case in support of his  
3 argument, that case is Celsius Mining, but that case does not  
4 help him. The arbitration provision in Celsius Mining,  
5 stated in bolded, capitalized letters that the arbitration  
6 clause covered any dispute of any nature between the parties  
7 relating in any way to this agreement. In light of that, the  
8 Celsius Mining court concluded that there was no requirement  
9 that the dispute arise under or even be in connection with  
10 the agreement in order to be arbitrable, and it held that the  
11 provision extended to disputes arising out of not just the  
12 main agreement, but a related promissory note as well. Here,  
13 to fall within the arbitration clause, disputes must arise  
14 out of or in connection with the SPA. So the provision does  
15 not extend as far as the one in Celsius Mining.

16                   Mr. Melamed has not responded to these points  
17 ever, not once. Instead, what Mr. Melamed has chosen to do  
18 is to argue for the first time in his reply brief that he  
19 does not need to demonstrate that a valid arbitration  
20 agreement governs his claims because the question of  
21 arbitrability should be decided by the arbitrator and not by  
22 this Court. Your Honor should disregard this argument, it  
23 was raised for the first time last week in what was  
24 Mr. Melamed's fourth submission on the subject of  
25 arbitrability. This is, in our view, a transparent attempt

1 to take the question out of this Court's hands at the  
2 eleventh hour because Mr. Melamed apparently has decided that  
3 he does not want Your Honor to rule on it.

4                 But to be clear, Your Honor, Mr. Melamed is wrong.  
5 Even as a matter of U.S. law, the SPA's incorporation of the  
6 rules of the Singapore International Arbitration Center does  
7 not end the Court's inquiry here. The U.S. Supreme Court has  
8 made clear that the Court should decide the issue of  
9 arbitrability unless there's clear and unmistakable evidence  
10 that the parties intended to submit that question to the  
11 arbitrator. The Richardson case from the Third Circuit on  
12 which Mr. Melamed relies itself states that even where an  
13 agreement incorporates in that case it was the AAA rules, a  
14 contract might still otherwise muddy the clarity of the  
15 parties' intent to delegate. And, notably, none of the cases  
16 that Mr. Melamed cites involve multiple contracts with  
17 inconsistent dispute resolution provisions, which is exactly  
18 what's present here and which clearly affects the analysis.  
19 In situations like that, many cases have held that the Court  
20 should not reflexively delegate the question of arbitrability  
21 to the arbitrable panel.

22                 But to the extent that the Court is inclined to  
23 hear more on this topic, notwithstanding the fact that  
24 Mr. Melamed did not raise it until now, the trust would  
25 request leave to file a surreply, if the Court is inclined to

1 read one.

2                   Now, Your Honor, even with respect to  
3 Mr. Melamed's motion to compel arbitration on the SPA claim,  
4 that too should be denied because there Your Honor still has  
5 discretion not to compel arbitration. The Supreme Court has  
6 held that Bankruptcy Courts may decline to compel arbitration  
7 where there's an inherent conflict between arbitration and  
8 the Bankruptcy Code's underlying purposes. And this Court  
9 held in In re Yellow that the Third Circuit case law does not  
10 prohibit the Court -- I'm sorry, does not require the Court  
11 to enforce a prepetition arbitration clause in the context of  
12 a claim objection. It's more nuanced than that. The Yellow  
13 court distinguishes the Mintz case, on which Mr. Melamed  
14 relies, on the grounds that claims allowance disputes involve  
15 the Bankruptcy Court's *in rem* jurisdiction and, unlike the  
16 Truth in Lending Act claim that was at issue in Mintz, claims  
17 allowance disputes arise out of Section 502 of the Bankruptcy  
18 Code, which states that Bankruptcy Courts shall determine the  
19 amount of contested claims and whether to allow them.

20                 THE COURT: Should I give any significance to the  
21 fact that the Yellow court focused on perhaps the wrong --  
22 well, let me ask this a different way.

23                 In Mintz, the court focused on the cause of action  
24 that was alleged by the parties, as have many, many, many  
25 courts in conducting the analysis of whether we should defer

1 or not defer, or apply discretion or not apply discretion.  
2 Yellow looked a little broader and said -- it didn't  
3 necessarily look at the cause of action that was being  
4 alleged, but looked at the proceeding and now it was brought  
5 to the court. So, the focus there was on the proceeding, the  
6 claims objection process.

7 MR. DUNNE: So, I'm sorry, what was your question,  
8 Your Honor?

9 THE COURT: Well, I'm trying to formulate --

10 MR. DUNNE: Oh, okay.

11 THE COURT: -- my question, which is, that seems  
12 to be a break in the application of the law, quite frankly.

13 So, is the focus really on the nature of the  
14 proceeding, or is the focus more rightly on the cause of  
15 action that's being alleged?

16 MR. DUNNE: I think, under this Court's  
17 jurisprudence, we can't ignore the context in which the claim  
18 alleges.

19 THE COURT: Well, you would agree with me that  
20 that was *dicta*?

21 MR. DUNNE: That what was *dicta* precisely, Your  
22 Honor?

23 THE COURT: Well, so in Yellow the issue turned on  
24 whether he should lift the stay, but the court then went on  
25 to conduct this analysis when it was not needed. The issue

1 before the court turned on whether he had the discretion to  
2 lift the stay --

3 MR. DUNNE: Right.

4 THE COURT: -- and it could have ended then and  
5 there, but it went on to talk about whether --

6 MR. DUNNE: In part because --

7 THE COURT: -- the FAA should yield or -- sorry,  
8 whether the court should require mandatory arbitration if the  
9 issue was not really the lift stay.

10 MR. DUNNE: Yeah, the lift stay issue was a little  
11 bit complicated there because the court did, I think,  
12 acknowledge that a motion to lift the stay had not formally  
13 been made, but nonetheless construed the claimant's request  
14 as one to lift the stay, and then to move to compel  
15 arbitration. But I think the different is in -- or at least  
16 in part in that the claimant had come to the Bankruptcy Court  
17 seeking to assert a claim against the estate and this issue  
18 had arisen in that context, whereas in Mintz the plaintiff --  
19 or the estate, the debtor was going out and bringing solely  
20 non-bankruptcy claims against, in that case, the defendant,  
21 essentially a federal claim under the Truth in Lending Act.

22 So I do think that context is significant, I will  
23 agree, of course, it's not dispositive.

24 THE COURT: So, if this issue was arisen in an  
25 adversary proceeding as opposed to the claims objection,

1 should that change my mind?

2 MR. DUNNE: If the issue had --

3 THE COURT: Is that a different analysis under  
4 Mintz then? Because Yellow even -- the court in Yellow even  
5 acknowledged that the issue that was raised in the adversary  
6 was really an objection to the secured claim of the lender,  
7 but nonetheless it was alleged in an adversary proceeding and  
8 that's a two-party dispute. Is that the focus here? Is that  
9 the correct framework by which I should analyze whether I  
10 have discretion to disregard an arbitration provision?

11 MR. DUNNE: I think -- I do think it's important  
12 that we not forget the context that we're in, that we not set  
13 that aside completely, which I think the court in Yellow did  
14 acknowledge the point that you are making and noted that the  
15 posture could have arisen in a different way potentially, but  
16 it had not and, in light of the fact that it had not and the  
17 significance of the claims allowance process and the mandate  
18 that appears in Section 502, which charges this Court to  
19 value and determine whether to allow claims, that it had to  
20 undertake the analysis that it did.

21 So, I think I understand your question. I don't  
22 think I -- your initial question, I don't think I would  
23 regard it as *dicta*. I think in light of that context,  
24 the 502(b) context, the Court had to grapple with 502(b)'s  
25 language, and it did so, and it still had flexibility to

1 reach either outcome under that framework.

2 THE COURT: Okay.

3 MR. DUNNE: And we would submit, Your Honor, that  
4 the Court should reach the same resolution that the Yellow  
5 court did here. Sending Mr. Melamed's claim to arbitration  
6 would frankly result in the waste of both estate assets and  
7 Mr. Melamed's assets, as well as considerable delay.

8 As we have discussed, only one of Mr. Melamed's  
9 claims is arbitrable and substantially all of the value of  
10 that claim turns on the threshold issues of 510(b)  
11 subordination and application of the plan, which all parties  
12 agree must be decided by this Court. And regardless of the  
13 outcome here, to add another layer, the matter must still  
14 come back before this Court on the issue of equitable  
15 subordination, which we all agree. So, in short, both  
16 parties would benefit from this Court retaining jurisdiction.

17 Now, one last point, Your Honor, before I step  
18 down, Mr. Melamed argues in his reply brief that the Court  
19 should impose a procedural framework in which the Court  
20 compels arbitration and stays all other proceedings until  
21 this matter is finished. That is clearly an attempt, in our  
22 view, to re-litigate what Your Honor ruled at the May 14th  
23 status conference, and what I think we're doing right now,  
24 and should be disregarded. The Court may rule on all of the  
25 threshold issues now, it has the authority to do that, and a

1 decision on them will frankly, likely lead to a prompt  
2 resolution of this entire claim.

3 THE COURT: Are subordinated claims receiving any  
4 distribution in this case?

5 MR. DUNNE: I believe that they are not expected  
6 to receive any distribution.

7 THE COURT: Okay.

8 MR. DUNNE: I'll turn -- I'm looking at  
9 Mr. Glueckstein?

10 MR. GLUECKSTEIN: Your Honor, at this point, like  
11 in any plan, it's unknown, but it is not estimated that -- it  
12 is not predicted at this point that subordinated claims will  
13 receive a distribution. There are billions of dollars of  
14 subordinated Government claims that would have to be paid  
15 before you could ever get to that level.

16 THE COURT: Okay.

17 MR. GLUECKSTEIN: But we of course, the trust  
18 continues to -- you know, to look for assets, so we don't  
19 know.

20 THE COURT: Okay, I appreciate that. There were  
21 many, many, many classes of the plan and I don't have it  
22 fully committed to memory, so thank you.

23 MR. DUNNE: Me either, Your Honor. Unless there  
24 are further questions from the Court, that's all I have.

25 THE COURT: I don't have anything further at this

1 time. Thank you very much.

2 MR. DUNNE: Thank you, Your Honor.

3 THE COURT: Mr. Adler.

4 MR. ADLER: Good afternoon, Your Honor, David  
5 Adler --

6 THE COURT: Good afternoon.

7 MR. ADLER: -- from McCarter & English on behalf  
8 of Seth Melamed. With me today in court is Ms. Chelsea  
9 Botsch from our Wilmington office.

10 I wanted to begin just as Mr. Dunne began. We  
11 would like to move into evidence the three declarations we  
12 submitted in connection with our opposition to the amended  
13 claims objection in April, and those are the declaration of  
14 Ryo Kawabata, and that is Document Number 30078, there is a  
15 declaration of Takane Hori, which is 30079, and then there's  
16 a second declaration of Ms. Hori, which is 30080.

17 THE COURT: Okay. Well, based on the  
18 representations, there's no objection, but I'll just ask for  
19 the record for you to confirm.

20 MR. DUNNE: Correct, no objection, Your Honor.

21 THE COURT: Okay, great. They're admitted into  
22 evidence. Thank you.

23 (Declaration of Ryo Kawabata received in evidence)

24 (Declarations of Takane Hori receive in evidence)

25 MR. ADLER: Thank you, Your Honor.

1           So, I wanted to step back and go to the beginning  
2 because we were thrown -- or the Court was sort of presented  
3 with this in the middle of the dispute and I wanted to take  
4 it back to 2021, which is when Mr. Melamed, who was a 22-  
5 percent shareholder, agreed to sell his interests, and the  
6 rest of Liquid's shareholders agreed to sell their interests,  
7 to FTX.

8           Now, Liquid was a holding company that had two  
9 exchanges underneath it, one that operated in Japan and one  
10 that operated in Singapore. The Japanese entity had a  
11 license, a crypto license, which made it extremely valuable.  
12 So that license required that a company that operates an  
13 exchange would hold customer crypto in custody, and the  
14 customers of FTX Japan received, unlike any other creditor in  
15 this case, their distributions in kind 100 percent.

16           Now, Mr. Melamed and the rest of the shareholders  
17 entered into this agreement in November of 2021, and the  
18 completion date was -- the closing date took place on  
19 April 4th, 2022. And under the agreement, which was  
20 referenced before, Mr. Melamed was entitled to several  
21 different forms of consideration; he was entitled to \$8.9  
22 million, which was crypto-currency, which was set aside for  
23 him, he was entitled to slightly more than a million shares  
24 of FTX common stock. He also received indemnities from the  
25 debtor for any misrepresentation that was made on account of

1 the SPA. And the SPA was very clear as a condition to  
2 closing that a management agreement had to be entered between  
3 Mr. Melamed and FTX and the FTX entities.

4 So that was a condition that was required as part  
5 of the closing and it took place on April 4th. Mr. Melamed  
6 stayed on at FTX Japan, which is, you know, the old Liquid,  
7 the filing took place. He stayed on as the COO of the  
8 company, getting -- interacting with the Japanese regulatory  
9 authorities, getting their approval to reopen the withdrawal  
10 window, and he stayed on actually until the FTX entity was  
11 sold to, I think it was bitFlyer, in July of last year. So  
12 he started prepetition and continued all the way up to  
13 approximately 11 months ago.

14 Now, for purposes of the claim, I want to direct  
15 the Court's attention to the SPA and particular 7.2, which  
16 are representations and warranties made by FTX Trading. And  
17 that representation -- those representations and warranties  
18 refer to Part B of Schedule 6, which is, if you look at -- I  
19 think it's the last item in Schedule 6, Number 8 says that  
20 all information contained in this agreement and all other  
21 information furnished by or on behalf of the purchaser to the  
22 sellers before and during the negotiations leading up to the  
23 agreement is true and correct in all material respects.

24 Well, I guess that did not turn out to be true, as  
25 we all know, and there's a separate representation that's

1 made that all statements in the disclosure documents are true  
2 and accurate.

3 Now, the disclosure documents are the documents  
4 that were actually provided to the Japanese regulatory  
5 authorities. So, as I understand it, Liquid was sort of  
6 acting as a conduit of information to the JFSA in order to  
7 get their approval to let FTX buy the shares, but that's  
8 another representation that obviously turned out not to be  
9 accurate.

10 The section of the SPA that is very relevant to  
11 this proceeding is Section 9.3, which is the indemnity, and  
12 it essentially covers all losses, which is very, very broadly  
13 defined to mean all costs, losses, liabilities, damages,  
14 claims, demands, proceedings, expenses, penalties, and legal  
15 and other professional fees, occurring on account of breach  
16 of representations and warranties made by the purchaser.

17 So, in the proof of claim, which is Claim  
18 Number 3385, it states, claimant asserts a general unsecured  
19 non-subordinated claim against the debtor of not less  
20 than \$35,613,112.19, which represents the purchase price of  
21 the Liquid shares less actual cash received, the retained  
22 consideration the debtors' obligation to indemnify claimant  
23 in connection with the purchase of LGI shares. So that is  
24 one of the items that is specifically identified in  
25 Claim 3385.

1           With that as background, Your Honor, I think that,  
2 from my perspective, the first threshold issue among the  
3 threshold issues is our cross-motion to compel arbitration.  
4 And for that I want to refer to Section 19.1 of the SPA,  
5 which says Japanese law controls the agreement, and  
6 Section 19.2, which states that any dispute, controversy, or  
7 claim arising in any way out of or in connection with this  
8 agreement shall be submitted to binding arbitration  
9 administered by the Singapore International Arbitration  
10 Center in accordance with the SIAC rules in force when the  
11 notice of arbitration is submitted, which rules are deemed to  
12 be incorporated by reference into this clause.

13           So, turning to the case law -- and I'm thinking  
14 about Mintz and Hayes -- the first question is, is there a  
15 valid and enforceable arbitration agreement. Well, the  
16 debtors haven't submitted any declarations that challenge the  
17 arbitration agreement. They acknowledge that it's an  
18 enforceable agreement; they just say that it doesn't apply to  
19 everything in this case, just to the SPA. So, at least on  
20 the threshold inquiry of whether there's a valid and  
21 enforceable arbitration agreement, the answer is yes.

22           And the next question becomes, if there's an  
23 arbitration agreement that's valid, does the scope of the  
24 arbitration get delegated to the arbitrator. And Mr. Dunne  
25 made, you know, some statements that I raised it for the

1 first time in my reply, the Henry Schein Supreme Court case  
2 that basically says, you know, if there's a delegation, it  
3 needs to be enforced, that was in response to the trust's  
4 statement that we had the burden of proof on it. I don't  
5 think that's the appropriate inquiry when there's a  
6 delegation provision. So that -- the reason why we cited  
7 Henry Schein and the Celsius/Mohsin case was in response to  
8 their statement that we have the burden of proof.

9 And what those cases stand for is essentially  
10 that, when there's a delegation, the Court possesses no power  
11 to decide the arbitrability issue and what one looks at is  
12 the arbitration agreement itself. And so if you're looking  
13 at the arbitration agreement under Section 19.2 of the SPA, I  
14 mean, I think it's pretty clear that the management agreement  
15 arises out of the SPA, it was a condition to the closing that  
16 that management agreement be executed.

17 So that, along with the incorporation of the SIAC  
18 rules -- and I think we referred to in our reply the SIAC  
19 rule, I think it's 28.1, that is the same as the AAA  
20 Rule 7(a) that says that the arbitrators possess the  
21 authority to determine the scope of their own arbitration.  
22 So the provisions that the courts are looking at in Henry  
23 Schein and in Mohsin are identical to the SIAC provision, and  
24 when those rules are incorporated, I think it means that  
25 essentially the Court has to defer in the first instance to

1 the arbitrator to decide what the scope of the arbitration  
2 is.

3 Now, even I can't say that the court in Singapore  
4 should be deciding what the Court -- what this Court  
5 determined in connection with the KEIP, okay? There's a  
6 court order that says, you know, it's a key employee  
7 incentive plan and, if certain conditions take place, the  
8 claimant is entitled to an award. Okay, I cannot see that  
9 that would be subject to arbitration. Okay? That's just the  
10 Court exercising its own authority to enforce its orders.

11 So I specifically referenced in the reply that  
12 we're not taking the position that that claim needs to be  
13 determined or whether the scope of the arbitration would  
14 include that claim. I acknowledge that that claim stays here  
15 because it's already subject to a court order.

16 And on that line I just want to note that the  
17 Third Circuit case of Richardson says that when there's a  
18 clear and unmistakable delegation of arbitrability issues to  
19 the arbitrator, which the Circuit found was -- you know,  
20 happened when the parties included the rules in the  
21 arbitration clause, that the court essentially has to defer  
22 the scope of the arbitration to the arbitrator.

23 So, along that line, once we get past the scope, I  
24 think the Court has to ask itself whether there are reasons  
25 why the arbitration conflicts with Federal Bankruptcy law,

1 and we said in our reply that we don't think it does. We are  
2 not saying that the arbitrator is going to be determining the  
3 Section 510(b) issue or the interpretation of the plan; it's  
4 just going to be the adjudication of the claim. And that  
5 happens all the time, you know, despite the trust's position  
6 that the goal of bankruptcy is the centralization of all  
7 disputes and claims, I mean, courts frequently grant stay  
8 relief for claims to be liquidated in state court, courts  
9 permissibly and mandatorily abstain from adjudicating  
10 disputes. You have the Rooker-Feldman doctrine, which  
11 basically -- you know, if there's a matter in state court, it  
12 has to go through the appellate process, not come to the  
13 Bankruptcy Court along the way.

14 So, there are many, many, many instances -- and,  
15 obviously, personal injury claims and wrongful death claims  
16 are not adjudicated in the Bankruptcy Court -- there are  
17 many, many, many instances where the Bankruptcy Court does  
18 not adjudicate the claim and it's left to the state court,  
19 despite the trust's desire that the Bankruptcy Court  
20 determine all claims.

21 So we don't think that there is a direct conflict  
22 because claims are adjudicated in other forums all the time,  
23 and we're not saying to the Court that the arbitrator is  
24 going to decide the Section 510(b) issue or the  
25 interpretation of the plan. We're going to have to come back

1 here and the Court is going to have to determine those  
2 issues, but we do think that it is appropriate for the claim  
3 to be liquidated in the first instance in the arbitration  
4 because there are a lot of factual issues here, Judge, that I  
5 think need to get fleshed out before this Court can make a  
6 ruling.

7                   And what I'm referring to is there's a disputed  
8 factual issue about whether there was a breach of contract  
9 prepetition, okay? They say it doesn't matter, whether  
10 it's -- whether there's a breach of contract or not, the  
11 result is the same. I'm not so sure about that, Your Honor,  
12 especially in light of the fact that Japanese law is  
13 applicable here, I don't know whether that is the case and,  
14 even if it were the case --

15                  THE COURT: What claim are you -- I'm sorry, just  
16 to clarify, what claim are you talking about?

17                  MR. ADLER: So with -- in the declarations of the  
18 foreign law experts we submit -- we submitted a declaration  
19 that said the retained consideration was required to be paid  
20 on April 4th, 2022, and the failure to pay it on  
21 April 4th, 2022 was a breach of contract, which allowed  
22 Mr. Melamed to go to arbitration and get a damages award as a  
23 result of their breach of contract. And I think you can see  
24 that in Document Number 30079, paragraphs 16 and 17. Our  
25 expert says, in my opinion, if a Japanese court or arbitral

1 panel applying Japanese law were to examine clause 2.1(d) of  
2 the side letter and the side letter schedule, it would  
3 conclude that there was a modification to clause 2.4(d) of  
4 the SPA. Accordingly, it is my opinion that a Japanese court  
5 or arbitral panel applying Japanese law would conclude that  
6 by not paying the retained consideration to Melamed on the  
7 completion date, FTX was in breach of the SPA and side  
8 letter.

9           Then our expert goes on to say that, if FTX were  
10 determined to have breached the SPA and side letter, it is my  
11 opinion that a Japanese court or arbitral panel applying  
12 Japanese law would award money damages in an amount equal to  
13 the value of the retained consideration as of the date of the  
14 breach, along with interest of three percent per annum on the  
15 overdue sum, with interest accruing daily, and a statutory  
16 late penalty of three percent per annum on the foregoing,  
17 pursuant to Article 404-2 of the Japanese Civil Code.

18           So Mr. Tanaka, their expert, says that there was  
19 not a breach. And if you look at the Hori  
20 declaration, 30079, she explains in detail why Mr. Takana is  
21 incorrect in his assessment that there was not a breach of  
22 contract.

23           All of this is to say, Your Honor, is that there  
24 are disputed factual issues, and I'll come to another one as  
25 we go forward, and that is the indemnity.

1                   THE COURT: On the retain consideration argument,  
2 even if I sent it to arbitration and even if the arbitrator  
3 determines, as your experts have determined, it still needs  
4 to come back to me for allowability and classification,  
5 correct?

6                   MR. ADLER: Correct.

7                   THE COURT: And I would have to apply the plan?

8                   MR. ADLER: Correct.

9                   THE COURT: Okay.

10                  MR. ADLER: We do not dispute that.

11                  THE COURT: So, there would be an argument at that  
12 point that I would have to take that claim and apply the  
13 estimation order to it, correct?

14                  MR. ADLER: Right.

15                  THE COURT: Okay.

16                  MR. ADLER: I mean, then argument and --

17                  THE COURT: So we would get there one way or the  
18 other?

19                  MR. ADLER: Correct.

20                  THE COURT: Okay. So it's really a timing issue?

21                  MR. ADLER: Correct.

22                  THE COURT: Okay.

23                  MR. ADLER: Now, I was just about to talk about  
24 the indemnity claim. Now, here, the record is pretty much  
25 barren because it was identified in the proof of claim, but,

1 for example, let's suppose that there, in the negotiation  
2 leading up to the SPA, there is a discussion over how the  
3 retain consideration is to be handled. Let's suppose that it  
4 was going to be cash put aside and they convince Mr. Melamed,  
5 based on the representations and warranties that crypto would  
6 be held in custody, that -- to set it up that way. That's  
7 separate and apart from the breach of contract issue; in  
8 other words, the formation, the modality of how the retain  
9 consideration was to be held, okay.

10           If misrepresentations were made, it is my opinion  
11 that those issues should be flushed out factually. I would  
12 take the position that that does not relate to a digital  
13 asset, okay; that relates to the formation of a contract and  
14 the agreement to structure it in a certain way, not in  
15 respect of a digital asset, under Section 4.4 of the plan.

16           And I think that we would say, obviously, that  
17 Your Honor would have the final say, but we think that the  
18 record should be developed exactly what the scope of the  
19 indemnity is and what the amount is and that there are  
20 disputed factual issues as to, you know, along the way. So  
21 that's why we think this is premature to be decided today  
22 because Your Honor just has a lot of legal argument in front  
23 of her; not that much facts. And we think that the  
24 development of a factual record will assist the Court in  
25 ultimately determining whether or not, you know, the 510(b)

1 argument applies and whether the plan Section 4.4 applies,  
2 so --

3 THE COURT: So there's a portion of your -- and  
4 forgive me that I don't know the answer, despite reading the  
5 pleadings -- but so that the indemnification claim, has that  
6 fully been flushed out, what the indemnification looks like?

7 MR. ADLER: Well, I think from --

8 THE COURT: What is the claim amount and how --  
9 what's it relating to?

10 MR. ADLER: Well, I think that there's -- I mean,  
11 if you take it, there's indemnity as a result of  
12 misrepresentations, right. So you have misrepresentations as  
13 to the financial condition of FTX, right --

14 THE COURT: Uh-huh.

15 MR. ADLER: -- which, you know, relates to a lot  
16 of different things. It relates to the agreement of  
17 Mr. Melamed to take part of the, or to set up the retain  
18 consideration in the way that it was set up. Obviously, it  
19 relates to the stock itself, right. Mr. Melamed was relying  
20 on the reps and warranties and the audited financial  
21 statements when he and the other shareholders made the  
22 decision to sell to FTX.

23 There are also, obviously, claims for legal fees  
24 and other professional fees. Mr. Melamed has lawyers in  
25 Japan, Singapore, here, you know, which would need to be

1 quantified. And there would -- there are some other issues  
2 related to the indemnity, as well, but it would generally  
3 deal with the formation of the contract and, you know, the  
4 events subsequent to the bankruptcy until the implosion of  
5 FTX.

6 So, from our -- and I said it, but I think that  
7 the consideration of the 510(b) issue is premature because  
8 the liquidation should happen first, a factual record should  
9 be built out, and then this Court can consider that, prior to  
10 determining the allowability of the claim.

11 And it's the same thing with respect to the plan;  
12 the plan says the value of the claim in respect of a digital  
13 asset shall be calculated by converting the value of such  
14 digital asset into cash as of the petition date. Well, there  
15 are a lot of different things floating around here and, you  
16 know, one of the first issues is the breach of contract  
17 issue, which the experts disagree on. And, you know, if  
18 there's a claim for, an indemnity claim for misrepresenting  
19 the financial condition of FTX, does that relate or is that  
20 in respect of the digital asset?

21 I don't think so. I think that has to do with a  
22 misrepresentation that was made at the time of the formation.  
23 But I think that these are issues that the Court is going to  
24 have to grapple with as, you know, once a record is built  
25 out.

1           Now, I just wanted to respond a little bit to your  
2 question about Yellow. When I look at Yellow, what I see is  
3 a hotly contested bankruptcy, where there's a claim by the  
4 PBGC, which will swamp everything. And so the whole case is  
5 essentially on ice until that claim is quantified.

6           And, you know, we don't have that situation here.  
7 FTX is out of bankruptcy. The Trust is in charge of  
8 liquidating the assets and quantifying the liabilities. So  
9 this case is very different than Yellow.

10           I'd also say that one of the points that Judge  
11 Goldblatt looked at was the fact that even if the claim went  
12 to arbitration, it still had to come back to an Article 3  
13 Court. So there was sort of a, you know, no harm, no foul,  
14 you know, issue floating around because it had to come back  
15 to an Article 3 Court in any event. And that, coupled with  
16 the fact that it was a multiparty dispute -- if I remember  
17 correctly, it was one of the general unsecured creditors who  
18 had filed the objection. So you had the Debtor, some  
19 creditors, the PBGC all fighting over this one issue. And  
20 the Court was concerned over the fact that, you know, if it  
21 went to arbitration, the creditors, the general unsecured  
22 creditors might be iced out of that proceeding. So, from our  
23 perspective of looking at it is sort of like an issue that  
24 everything is dependent upon: the quantification of that  
25 liability.

1           And this is completely the opposite. I mean, this  
2 is a large claim to my client, but it's a very small claim in  
3 the realm of FTX.

4           THE COURT: So, regardless if I find whether I  
5 have discretion or not --

6           MR. ADLER: Right.

7           THE COURT: -- if I fall into Yellow's decision  
8 that I have discretion --

9           MR. ADLER: Right.

10          THE COURT: -- that I should not exercise the  
11 discretion?

12          MR. ADLER: Right.

13          And we did make that point that the Singapore  
14 Court is better equipped. You know, speaking for myself,  
15 dealing with the Japanese lawyers, I don't really understand  
16 civil law and, you know, there are -- it's completely a Civil  
17 Code country. And we think that Singapore, the SIAC would be  
18 the better -- has more experience in terms of dealing with  
19 those matters and in terms of dealing with the liquidation of  
20 these types of claims. It's apparently a very common  
21 procedure to resolve claims in this manner.

22          So, you know, for the reasons that we set forth in  
23 the reply, we would ask that our cross-motion to compel  
24 arbitration be granted and that the Court, essentially,  
25 either direct the arbitrator to determine the scope of the

1 arbitration or put the claims related to the management  
2 agreement on hold, pending that determination, so that when  
3 we do have to deal with these issues, it can be done in a  
4 coordinated fashion and not piecemeal.

5 And with that, Your Honor, do you have any  
6 questions?

7 THE COURT: I do not at this time.

8 MR. ADLER: Thank you.

9 THE COURT: Okay.

10 MR. DUNNE: Very briefly, Your Honor.

11 Mr. Adler said a lot there, Your Honor, on the  
12 background on the entities and what customers received and  
13 why that may have been. And I would just remind the Court  
14 that none of that is before Your Honor today. There were  
15 three threshold issues before Your Honor today.

16 Significantly, Mr. Adler conceded just now that  
17 the consideration that Mr. Melamed was to get in the SPA took  
18 the form of FTX stock and specified cryptocurrency. That  
19 ends the inquiry on Section 510(b) subordination and plan  
20 application.

21 And as Your Honor pointed out in colloquy with  
22 Counsel, those are things that you can decide now. Those are  
23 things that will ultimately have to come back to you know  
24 matter what is decided in an arbitration.

25 Mr. Adler also brought up a lot of things that his

1 experts say on the merits; obviously, both sides have  
2 parties -- I'm sorry -- both sides have experts who have  
3 views on the merits. The reason that those experts aren't  
4 here today and why both sides aren't cross-examining them is  
5 that those things don't matter for purposes of this hearing.  
6 We are dealing with purely legal issues that are clearly  
7 before Your Honor and which all parties acknowledge must be  
8 decided by this Court.

9                 The other thing I would mention, Your Honor, is  
10 Mr. Adler read a portion of the arbitration clause from the  
11 SPA to you. He omitted Section 19.4, I think, which says  
12 that the arbitration agreement, in Clause 19, shall be  
13 governed by the laws of Singapore, on which he has offered  
14 neither evidence, nor argument.

15                 And with respect to the various indemnification  
16 arguments that Mr. Adler raised, I would simply point out  
17 that the SPA indemnifies losses arising from breach of the  
18 agreement. For purposes of the issues the Court is looking  
19 at today, it does not matter whether the agreement was  
20 breached or not, because Section 510(b) subordination  
21 applies, regardless of whether it is a fraud in the issuance  
22 of securities or sale of securities or some breach of  
23 contract or otherwise.

24                 And, regardless, the crypto consideration piece  
25 was a claim in respect of digital assets. They're specified

1 digital assets -- he doesn't dispute that -- and he ascribes  
2 value to them based on those digital assets.

3 THE COURT: If there's an indemnification claim  
4 arising from the cryptocurrency dispute, are you seeking to  
5 subordinate that.

6 MR. DUNNE: Yes, Your Honor.

7 We believe that we could seek to subordinate. We  
8 could properly seek to subordinate any claim associated with  
9 the SPA on 510(b) grounds. The case law on 510(b)  
10 subordination is extremely broad; it extends to all claims  
11 that even emanate from a contract or a claim relating to a  
12 sale of securities of the Debtor.

13 We have taken the position, however, in this claim  
14 proceeding that the best treatment of that claim is under the  
15 plan as a claim in respect of digital assets and we have not  
16 sought to subordinate the entire SPA claim, which would have  
17 been our right to do.

18 THE COURT: But just the indemnification portion?

19 MR. DUNNE: The indemnification portion, it is  
20 impossible to disentangle indemnification relating to the  
21 crypto consideration piece from all of the other arguments;  
22 it's one litigation that's essentially been brought.

23 THE COURT: Uh-huh.

24 MR. DUNNE: And, frankly, we believe that 510(b)  
25 subordination could apply to every aspect on this, even the

1 crypto consideration piece.

2 THE COURT: Okay. Thank you.

3 MR. DUNNE: Thank you, Your Honor.

4 THE COURT: Okay. Well, I'm going to take this  
5 matter under advisement and I will attempt to rule promptly,  
6 either orally or by written opinion.

7 Thank you for reserving the afternoon for this.

8 It turns out we didn't need to do that because you are all so  
9 efficient and I very much appreciate that, but that meant you  
10 all had to come down here in the afternoon and then stay,  
11 so -- but it is what it is. I'm glad that we had the  
12 opportunity to tackle this today.

13 As I mentioned, I will take it under advisement  
14 and I will see some, perhaps all of you, back here on Friday.  
15 And with that, we'll stand adjourned.

16 Thank you all very much.

17 COUNSEL: Thank you, Your Honor.

18 THE COURT: Take care.

19 (Proceedings concluded at 2:31 p.m.)

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## CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling June 26, 2025

8 William J. Garling, CET-543

June 26, 2025

9 Certified Court Transcriptionist

10 | For Reliable

10 | For Reliable

11

12 | /s/ Tracey J. Williams

June 26, 2025

13 | Tracey J. Williams, CET-914

14 | Certified Court Transcriptionist

15 | For Reliable

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